IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1795 OF 2006

Mr.Navin Ramchandra Lade
Aged 32 years, residing at
Govind Sheth Chawl, Room No.82,
Govind Wadi, Behind Cine Magic,
Andheri (E), Mumbai 400 093. .. Petitioner.

Vs.

1. Shri A.N.Roy,
Commissioner of Police,
For Greater Mumbai, Mumbai ..

2. State of Maharashtra ..

3. The Superintendent of Jail
Thane Central Prison,
Thane. ..

4. The Superintendent of Jail,
Nashik Central Prison,
Nashik .. Respondents.

Mr.Meghashyam Kocharekar for the petitioner.
Mr.D.S.Mhaispurkar APP for the respondents.

CORAM : SMT.RANJANA DESAI &
D.B.BHOSALE, JJ.
DATED : 4TH JUNE, 2007.

JUDGMENT (PER D.B.BHOSALE, J)

. This writ petition under Article 226 of the Constitution of India, filed by the brother of a detenue - Vishal Ramchandra Lade, seeks to quash and set aside an order of detention dated 29.6.2006 issued by the Commissioner of Police, Brihan Mumbai (for short "detaining authority") under sub-section (2) of section (3) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug

Offenders Persons Act, 1981 (Mah.Act of LV of 1981) (Amendment-1996) (for short "the Act") read with Government Order, Home Department (Special) No.DDS-1305/CR-01/SPL-3(B), dated 28.3.2006. The order of detention is passed with a view to prevent the detenue from acting in any manner prejudicial to the maintenance of public order.

2. The order of detention is founded on the grounds of detention dated 29.6.2006 communicated to the detenue as provided for under section 8 of the Act read with Article 22(5) of the Constitution of India. The action of detention is based on a solitary incident that occurred on 15.3.2006 at about 22.25 hours. It appears that an offence under section 452, 504, 323, 506-II read with 34 of the Indian Penal Code as also under section 37(1)(a) of Bombay Police Act came to be registered at MIDC police station vide C.R.No.101/2006 on the complaint lodged by Nathubhai Haribhai Tejalavhiya against the detenue and his associates. In connection with this incident statements of some witnesses including in-camera statements of witness ‘A’ and ‘B’ referred to in the grounds of detention were recorded. A detailed reference to the statement is made in the grounds of detention dated 29.6.2006.

3. In the grounds of detention, it is specifically stated that the detenue is a weapon wielding dangerous desperado of violent character having taken to a life of crime for the sake of easy money and to show his upper hand in the localities of Prakashwadi, Govindwadi, Ramwadi, Chakala, Andheri (East), Mumbai and the areas adjoining thereto within the jurisdiction of MIDC police station in Brihan Mumbai. The grounds of detention further state that the detenue has created reign of terror in the aforesaid localities by moving in groups and disturbed the peace over there. In view of the alleged activities, it further states, the residents and businessmen are living in a state of shock and are feared to carry on their daily pursuits. It appears in the past with a view to curtail criminal activities of the detenue and his associates in the year 1999 Chapter proceedings under section 110(e)(g) of Criminal Procedure Code were initiated at the instance of MIDC police station vide Chapter Case No.5/99 and Court Case No.21/99. A bond of Rs.25,000/- was obtained from the detenue with two sureties in the like amount for keeping peace and good behaviour for a period of one year. Taking the entire material placed before detaining authority, it has recorded in the grounds of detention the subjective satisfaction that the detenue is a

dangerous person as defined in section 2 (b-1) of the MPDA Act. It is against this backdrop the order of detention came to be passed with a view to prevent the detenue from acting in any manner prejudicial to the maintenance of public order after the approval was granted by the State Government under section 3(3) of the said Act. The detenue was also informed about his right to make representation/s to the Detaining Authority i.e. Commissioner of Police, Brihan Mumbai as also to the State Government, Central Government and the Advisory Board constituted under section 9 of the MPDA Act.

4. Though the petitioner has impugned the order of detention on several grounds, the learned counsel for the petitioner raised the following grounds: Firstly, the activities of the detenue by no stretch of imagination could be said to be prejudicial to the maintenance of the public order; secondly, the order of detention is a classic example of non application of mind; and lastly, non placment of the papers of a cross complaint filed by the detenue against the complainant. Mr.Kocharekar, learned counsel for the petitioner invited our attention to paragraphs 5(a)(i) to 5(a)(vii) of the grounds of detention and submitted that the alleged incident occurred in the house of the complainant. In the alleged incident,

the detenue also suffered injuries for which he was required to be admitted in the hospital. The cross complaint was filed by the detenue and in pursuance thereof the offence came to be registered against Nathubhai and his associates at MIDC police station. According to Mr.Kocharekar the manner in which the alleged incident occurred, it cannot be said that it affected the public order. In other words, he submitted that there was no material before the detaining authority to reach a conclusion that the detenue indulged in the activities prejudicial to the maintenance of public order. He further submitted that non supply of proforma and statement of the complaint registered at his instance vide C.R.No.101/2006 has resulted in affecting the Constitutional right of the detenue embodied under Article 22(5) of the Constitution of India. He then invited our attention to the statement made in paragraph 15 of the reply affidavit filed by the detaining authority denying that the detenue had suffered injury in the alleged incident that occurred on 15.3.2006 and submitted that it further demonstrates non application of mind since admittedly the detenue had sustained injury in the alleged occurrence. He further invited our attention to the medical certificate of Jasumati Tejalavhiya and submitted that it clearly shows that she did not

sustain any injury in the alleged occurrence.

5. Mr.Mhaispurkar, learned A.P.P. for the State, on the other hand, invited our attention to the reply affidavit filed by the detaining authority dated 2.11.2006 as also to the grounds of detention to demonstrate as to how the activities of the detenue are prejudicial to the maintenance of public order and as to how the alleged incident dated 15.3.2006 fall within purview of disturbance of public order. Mr.Mhaispurkar fairly stated that the statement made by the detaining authority in paragraph 15 of the reply affidavit denying that the detenue was injured is incorrect. Mr.Mhaispurkar, after taking us through the relevant paragraphs of the reply affidavit vehemently submitted that the material on record is sufficient to demonstrate that the detaining authority applied its mind to all the aspects and having satisfied that the detenue is acting in the manner prejudicial to the maintenance of public order, the order of detention came to be passed.

6. We perused the grounds of detention as also the reply of sponsoring authority and the incident dated 15.3.2006, as narrated by Nathubhai. It would be advantageous to reproduce the relevant paragraphs

5(a)(i) to 5(a)(vii) of the grounds of detention for better appreciation of the submissions of the learned counsel for the parties. The relevant paragraphs read thus:

> "5(a)(i) On 15.3.2006 there were celebrations of Holi Festival. In the night at about 22.25 hours, the complainant Shri Natubhai Haribhai Tejalavhiya and his wife were present in the house. At that time, you and your associates Arun Mestri, Rajesh Naik barged into his house and you asked the complainant, "Ramesh Latke ke paas kyon jaata hai? Wah kaun hai?" "You and your associate then started abusing the complainant. You then threatened the complainant saying "Mere paas chopper hai, tujhe maar dhaloonga" This led to a scuffle in between the complainant and you. On this, the complainant's wife Smt.Jasumati intervened. You pushed her as a result of which, she collapsed on the cot and became unconscious due to the shock. Neighbourers crowded around. You threatened the complainant further saying that "Tula thaar marun taaken". You are a known goonda from the areas and always doing goondagiri. Therefore, the residents are afraid of you. On seeing your angry mood and as you are a notorious criminal, people got scared and ran helter-skelter and the residents closed their doors and windows apprehending trouble. You and your associates then went from there. The complainant's sister Ramaben Ashokbhai Rathod removed the complainant's wife Smt.Jasumati to the Sanjivani Hospital, Andheri (East), where she was admitted and was treated. Though she recovered her consciousness, she was not able to speak out.
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> (5)(a)(ii) Police reached the place and recorded the statement of the complainant Shri Natubhai Haribhai Tejalavhiya. In this connection, on 16.3.2006 an offence under section 452, 504, 323, 506(ii), 34 IPC r/w sec.37(1)(a) B.P.Act was registered against you and your associates at MIDC police station vide C.R.No.101/06.
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> . In retaliation you and your associates were also assaulted by the

complainant and his associate Advocate Tribhuvandas Sharma so an offence U/sec.324, 506(2), 34 IPC r/w 37(a)(1) vide C.R.No.102/06 has been registered against complainant Shri Natubhai Haribhai Tejalavhiya and his associate at M.I.D.C. police station.

5(a)(iii) On 16.3.2006, police visited the place of offence and drew panchanama.

5(a)(iv) The statement of the following witnesses were recorded. They have corroborated relevant facts of the case.

1) Smt.Jasumati Natubhai Tejalavhiya aged 48 years.
2) Smt.Ramaben Ashokbhai Rathod, aged 48 years.
3) Smt.Neruben Dayabhai Rathod, aged 50 years.

5(a)(v) You were arrested in this case on 16.3.2006. During the course of investigation your statement was recorded by the police in which you admitted your guilt. Your associates Arun Mahadeo Mestry and Rajesh Ganpat Naik were also arrested on 16.3.2006.

5(a)(vi) The Medical Certificate dated 29.6.2006 of Smt.Jasumati Natubhai Tejalavhiya indicating her health condition issued by Medical Officer of Sanjeevani Hospital, Mumbai was obtained by Police.

5(a)(vii) On 16.3.2006 when you were placed for remand before the Ld.M.M. 22nd Court, Andheri, Mumbai, you were ordered to be remanded into police custody until 17.3.2006. On your behalf your advocate made an application for bail in the said Ld.Court. The Ld.Court kept it for hearing on 17.3.2006. On 17.3.2006 when you were again placed for remand before the Ld.M.M. 22nd Court Andheri, Mumbai you were ordered to be remanded into Judicial custody until 31.3.2006. However, the Ld.M.M. after considering your bail application ordered you to be released on bail in the sum of Rs.10,000/- with one or two sureties of the like amount or cash bail, with the condition to attend concerned Police Station for 10

> days and should not threatened the complainant and witnesses. On 20.3.2006 you have availed of the cash bail facility."

7. From perusal of the aforesaid material, as reflected in paragraph 5(a)(i) to 5(a)(vii), it appears that the alleged incident occurred within the four walls of the house of the complainant. In the alleged incident neither the complainant nor his wife Jasumati sustained any injuries worth mentioning. The injury certificate of Jasumati, wife of the complainant - Nathubhai, does not show that she suffered any injuries. It appears from the material on record that there was a scuffle in which the detenue also suffered injuries for which the cross complaint at his instance came to be registered by MIDC police station for offence under sections 324, 506-II read with 34 of Indian Penal Code and section 37 (a)(i) of the Bombay Police Act. The fact that the detenue suffered injury in the alleged incident has not been controverted by Mr.Mhaispurkar, learned A.P.P.

8. In the present case, the crucial issue is whether the activities of the detenue were prejudicial to public order. The Supreme Court had an occasion to consider scope and ambit of phrase "prejudicial to public order" in **Commissioner of**

Police and Others Vs. C.Anita (Smt.) 2004(7) SCC 467. The Supreme Court while considering the expressions "law and order" and "public order" observed thus:

> "... ...the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:
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> . "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?
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> . This question has to be faced in every case on its facts."

. In **Kanu Biswas Vs. State of West Bengal (1972) 3 SCC 831** the Supreme Court had observed that this test should be adopted in determining whether an act affects "law and order" or "public order". It is

thus clear that the public order if disturbed, must lead to public disorder. Every breach of peace does not lead to public disorder. In other words, every infraction of law must necessarily affect order, but an act affecting "law and order" may not necessarily also affect the "public order". It is also well settled that stray and unorganised crime of assault is not a matter of public order since it does not tend to affect the even flow of public life. This is settled by the Supreme Court in the **Commissioner of Police Vs. C.Anita's** case (supra). This position of law is reiterated by the Supreme Court in **State of U.P. and Anr. Vs. Sanjay Pratap Gupta and Others 2004(8) SCC 591**.

9. In the facts of present case if we apply the test in determining whether an act affects "law and order" or "public order", in our opinion, it does not lead to disturbance of the current life of the community so as to amount to disturbance of the public order and it would at the most affect merely an individual living. The alleged incident, as narrated by the complainant, did not, in our opinion, affect the flow of public life or led to public disorder even if it might have had affected the law and order. In other words a bare reading of the grounds of detention would show that the alleged

incident did not affect the public order and it merely affected or disturbed living of the complainant and his wife. In the circumstances of this case we hold that the alleged incident and acts of the detenue are not sufficient to hold that it affected the public order. Insofar as the ground of non application of mind is concerned, it is clear that the detaining authority did not apply its mind to the fact that the detenue had sustained injury in the alleged occurrence. Looking to the peculiar facts and circumstances of the case, had this fact been taken into consideration, perhaps it would have affected subjective satisfaction of the detaining authority. In the circumstances the order of detention cannot be sustained. We set aside the impugned order of detention dated 29.6.2006 passed by the Commissioner of Police, Brihan Mumbai, under the provisions of M.P.D.A. Act, 1981 the detenue - Vishal Ramchandra Lade is ordered to be released forthwith unless he is otherwise required in any other case.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)